IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.201 OF 2004

Ramsunder G. Sharma ...Petitioner

Versus

Municipal Corporation of Greater Bombay and Others ...Respondents

Shri A.Y.Sakhare, Sr counsel with Nisha Dhabade for the BMC (Respondents).

CORAM : ABHAY S.OKA, J.
DATED : JUNE 19, 2007.

P.C.:

1. None appears for the Petitioner. Heard learned senior counsel appearing for the contemnors. I have perused the averments made in the Petition, the annexures to the Petition and the affidavits filed by the contemnors.

2. The breach alleged in this Contempt Petition is of order dated 25th March, 2004 by which the learned Judge of the City Civil Judge at Mumbai directed both the parties to maintain status-quo till 16th April, 2004. The said order was passed as the learned Advocate appearing for the first Respondent sought time to take instructions. Thus, the order of which breach is allegedly committed is an ad-interim order which was to operate till 16th April, 2004.

3. The allegation made in the Contempt Petition is

that on 5th April, 2004, the Respondents-contemnors demolished the suit structure notwithstanding the ad-interim order passed by the trial Court.

4. In the affidavit of the third contemnor Shri Ranjit Dhakne he has set out the manner in which proceedings were taken out by the Petitioner. It is stated that one Ramshankar J. Sharma filed earlier suit No.832 of 2004 in respect of the same structure. The Notice of Motion take out by the said Ramshankar Sharma was kept on 09th February, 2004 before the trial Court. On that day a statement was made before the trial Court by the Respondents that after following due process of law, the suit structure has been demolished on 07th February, 2004. It is stated that the concerned Officer of the first Respondent was present in Court alongwith action papers containing photographs showing the demolition of suit structure. Therefore, the trial Court did not grant any ad-interim relief and the Notice of Motion was simplicitor adjourned. It is stated that the work of demolition was carried out on the basis of a notice under section 354A of the Mumbai Municipal Corporation Act, 1888. After the demolition of the structure, the present Petitioner filed a suit in which the order dated 25th March, 2004 has been passed. The challenge in the said suit is to the same notice under section 354A on the basis of which the structure was

earlier demolished. It is pointed out that even prior to issuing notice under section 354A on 25th November, 2003, the structure was demolished and it was reconstructed. It is alleged that the Petitioner suppressed material facts and that is how ad-interim order was passed by the trial Court on 25th March, 2004. It is stated that the Petitioner reconstructed the structure which was demolished on 05th April, 2004. It is stated that the said contemnors were not aware about the order of status-quo. There is an affidavit filed by the second contemnor by which he has adopted the affidavit filed by the third contemnor.

5. The breach alleged in this Contempt Petition is of ad-interim order which was to operate only for a limited time. There is prima facie material on record to show that the structure was earlier demolished on more than one occasion and it is reconstructed by the Petitioner. The Petitioner could have always taken recourse to provisions of Rule 2A of Order 39 of the Code of Civil Procedure, 1908.

6. Considering the aforesaid facts, no case is made out for taking any further action under the Contempt of Courts Act, 1971. Accordingly, contempt notice issued to the contemnors is discharged. Contempt Petition is disposed of. It is made clear that no adjudication is

made on merits of the suit filed by the Petitioner, if the same is pending.

JUDGE